Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Amendment of Section 73.21 and 73.37,	)	MB Docket No. _____
of the Commission's Rules to Provide for Facilities	)	RM-_____
Changes by Stations Operating in the Expanded	)	
AM Band (1605-1705 kHz)	)	

TO: Audio Division

PETITION FOR RULEMAKING

InterMart Broadcasting of Georgia, Inc., Rama Communications., and Multicultural Radio Broadcasting, Inc. (collectively, the "Expanded Band Petitioners" or the "Petitioners"), by their attorneys, respectfully request the Audio Division to initiate a Notice of Proposed Rulemaking, looking towards the amendment of §73.21(a)(2) of the Commission's Rules to read as follows:

> (2) *Class B station.* A Class B station is an unlimited time station which is designed to render service only over a primary service area. Class B stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW.

Additionally, Petitioners request that §73.26 of the Rules be amended to read as follows:

> §73.26 Regional channels; Class B and Class D stations. (a) The following frequencies are designated as regional channels and are assigned for use by Class B and Class D stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590, and 1600 kHz.

> (b) The following frequencies are designated as regional channels and assigned for use by Class B stations: 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, and 1700 kHz.
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> (c) Additionally, in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450, and 1490 kHz are designated as Regional channels, and are assigned for use by Class B stations. Stations formerly licensed to these channels in those locations as Class C stations are redesignated as Class B stations.

Finally, Petitioners request that §73.37 of the Rules be amended to add the following note:

> 5. Applications for facilities changes by authorized stations in the expanded AM band (1605 -1705 kHz) will be treated as applications for changes in facilities of a Class B station and are acceptable for filing if they provide the requisite protections to other stations and cut-off applications, treating other stations and applications in the 1605 – 1705 band as Class B facilities.[1]

I. Introduction

1. In this Petition, we will demonstrate that the expanded band has been populated, and that approximately 65 stations are now either operating in the band, or will soon be operating in the band. No rules exist, however, for changes in facilities of these stations. Stations cannot increase power or change station location without a waiver of the Rules. Rules should be adopted which allow existing stations to make facilities changes without burdening the staff with waiver requests. Furthermore, these rules should thoroughly protect the band against becoming burdened with interference. The rule changes that we propose will do that. First, however, it will be helpful to describe the Commission's efforts to reduce or contain interference within the AM band.

[1] It appears that notes 3 and 4 to the existing rule are obsolete, and refer to definitions of terms which no longer appear in the Rules. The FCC may wish to delete notes 3 and 4, and make this note number 3.

II. Overview

2. In the 1930's, the Federal Radio Commission, and its successor, the Federal Communications Commission, regulated radio broadcasting essentially as a common carrier. When an application was filed for a new station, the applicant was required to show that there was a "need" for that additional station.[2] As a result of this type of regulation, the number of stations was held artificially low. In fact, the total number of stations authorized in the country in 1938 was only 660. *NBC v. U. S. and CBS*, 319 U.S. 190 (1943) at p. 197.

3. In 1940, however, the United States Supreme Court found that Congress had intended to leave the business and radio broadcasting to the area of free competition. *Sanders Brothers Radio Station v. FCC*, 309 U.S. 470 (1940). As a result, the FCC could no longer require a showing of need for new stations and the stage was set for an explosion in the number of authorized stations when World War II ended, in 1945.

4. That explosion did, in fact, take place. Furthermore, it took place under rules which expressly sanctioned interference between stations, so long as the need for the new service outweighed the loss of service created by the interference. *Albertson v. FCC*, 100 U.S. App. DC 103, 243 F 2d 209 (DC Cir., 1957); *Interstate Broadcasting Co. v. FCC*, 105 U.S. App. DC 224, 265 F. 2d 598 (DC Cir., 1959).[3]

5. By 1962, the number of AM broadcast stations had grown to 3,871, congestion in the AM band was becoming a problem, and the Commission determined that the time had come to reevaluate its AM broadcast rules.

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[2] Cases describing the system are long since out of print. However, they are described and cited at pages 53:345 and 53:353 of Pike & Fischer's Consolidated Digest.

[3] If a proposed facility caused interference at an existing station, the practice was to designate the application for hearing on issues calling for a determination of whether the need for the new service outweighed the loss of service resulting from the interference. For a few examples, see *Babylon-Bayshore Broadcasting Corp.*, 22 FCC 1191 (1957); *Noble-DeKalb Broadcasting Co., Inc.*, 24 FCC 43 (1958); *Plainview Radio, Inc.*, 24 FCC 405 (1958).

6. On May 10, 1962, the Commission imposed a freeze on the acceptance of standard broadcast applications, pending consideration in a rulemaking proceeding of basic issues pertaining to the assignment of such facilities. *Interim Criteria to Govern Acceptance of Standard Broadcast Applications*, 23 Pike & Fischer RR 1545 (1962).

7. On July 7, 1964, the freeze was lifted and the Commission adopted a *Report and Order* making changes in its AM Assignment Standards. *AM Assignment Standards and the Relationship Between AM and FM Broadcast Services*, 2 RR 2d 1658 (1964). The old system, in which interference was evaluated to determine whether the need for new service outweighed the loss of service resulting from interference, was replaced with a new go/no-go system, based on contour overlaps. If an application would result in a prohibited overlap of contours with another station, the application was not to be accepted for filing. There were, however, exceptions. Overlap was permitted, for example, in the case of a first local transmission service to a community. Also, the Commission made no changes in its definitions of what constituted "interference." As a result, these 1964 reforms did not greatly inhibit continued growth in the AM broadcast service.

8. By 1987, the number of AM stations operating in the United States had increased to 4,900 and the Commission issued a Notice of Inquiry, looking towards an overall review of the technical assignment criteria for the AM broadcast service. *In re: Review of Technical Criteria of the AM Broadcast Service*, 5 FCC Rcd 5014 (1987) (For the number of stations, see paragraph 7). As a result of the Notice of Inquiry, a *Report and Order* was issued on October 25, 1991, and published at 6 FCC Rcd 6273 (1991). In the *Report and Order*, at paragraph 4, the Commission recited several changes, which it had already made in the AM Assignment Standards, in an effort to resolve issues

pertaining to congestion in the band. These actions included improving the Commission's prediction of ground wave and nighttime sky wave service and interference,[4] accepting interference-reducing modifications without competing applications,[5] eliminating grandfathered deleted AM station assignments,[6] and adopting new emissions standards for adjacent channel interference to improve aural fidelity[7]. In addition, the Commission made fundamental changes in its technical assignment criteria. Prohibited overlap between stations on adjacent channels was changed from the standard which allowed an overlap of the 0.5 mV and 0.5 mV/m contours to a standard which prohibited any overlap between the 0.5 mV and the 0.25 mV/m contours of stations operating on adjacencies. Additionally, for the first time, the Commission provided adjacent channel production to nighttime sky wave contours. In short, the Commission "did it right" this time, and tightened up the technical standards to ensure that the congestion which had been created from the systems used in prior years would not occur again.

9. To round out the interference reduction measures adopted in the *Report and Order*, the Commission also adopted procedures to populate the expanded band (1605-1705 kHz). Under these procedures, the stations operating in the standard band were to be studied; those stations causing the most interference (the worst "polluters") were to be identified, and those stations were to be offered an alternate allotment in the expanded band, on condition that they give up their polluting assignments in the standard

[4] *Ground Wave and Nighttime Sky Wave Service and Interference*, 5 FCC Rcd 4489 (1990); 5 FCC Rcd 4482 (1990)

[5] 5 FCC Rcd 4492 (1990)

[6] *Id.*

[7] 4 FCC Rcd 3835 (1989); recon. denied; 5 FCC Rcd 2598 (1990); 5 FCC Rcd 5191 (1990)

band within 5 years. The allotments in the expanded band were to be selected in accordance with Model I, using spacings to achieve the required separation of stations from other stations on the same and adjacent frequencies, much as it is done in the case of FM and TV.

III. There is a Need to Regularize the Ability of Stations in the Expanded Band to Improve Their Facilities

10. As a result of the allotments made with the Model I distance spacings methods, approximately 65 stations have now been authorized in the expanded band, and are either on the air, or about to go on the air. *See*, Table I attached hereto. However, while the distance spacings may have been an adequate method of populating the band, the use of distance spacings is not the most logical way of making allotments in the 1605-1705 kHz band. Actual interference in that band is a function, daytime, of distance, ground conductivity, frequency, operating power, and, in the case of directional stations, directional patterns. At night, interference is a function of distance, vertical radiation, operating power, frequency, and, once again, directional patterns.

11. There is still another problem with the use of distance spacings as an allocation tool in the expanded band. In AM, unlike FM, the use of directional antennas can produce radiated power in the maximum lobes which exceeds the actual output power of the transmitter. This means that, if stations are allocated strictly on a spacings basis, all of the allotments must be assumed to be non-directional. In actual practice, however, the use of directional antennas is a tried and proven tool to maximize coverage while avoiding interference to other stations. No logical reason exists to restrict the use of this valuable tool, in the expanded band.

12. As matters presently stand, the stations populating the expanded band are fixed in place. No specific rules exist for them to improve their facilities or expand their

service to the public. Yet, because of the 1991 reforms, previously described, there is no reason why such improvements should not be allowed; the 1991 reforms ensure that, so long as the standards adopted in 1991 are adhered to, any such improvements will be on an entirely interference-free basis.

IV. Conclusion

13. As shown, the allocations standards used by the Commission in prior years resulted in serious congestion problems in the AM band. Stations were allocated, even in the face of substantial interference to other stations. In subsequent years, however, and particularly in 1991, the Commission adopted reforms which, if applied, will ensure that the problems of congestion and interference will never again occur.

14. While the use of distance spacings (Model I) may have been an acceptable method of populating the expanded band, the public interest will be served by allowing the use of more efficient engineering tools to govern future facilities changes in that band. In this Petition, we ask the Commission to delete the provision in the Rules that restricts expanded band stations to an operating power of 10 kW day, 1 kW night. We also ask the Commission to allow the use of directional antennas.

15. Adoption of the rule changes proposed herein will serve the public interest. It will enable expanded band stations to respond to market forces, and to adjust their facilities to serve the largest possible number of persons in those areas where there is the greatest public need. In short, the proposed rule changes will give expanded band licensees the flexibility they need to best serve the public while, at the same time, relieving the Commission staff of the burdensome task of evaluating multiple waiver requests.

Respectfully submitted,

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